UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSEPH BARBOSA Plaintiff,	:	No.
vs.	:	**ORIGINAL COMPLAINT**
STANDARD FIRE INSURANCE COMPANY Defendant.	:	**Jury Trial: No**

Plaintiff, by his attorney, Denis G. Kelly, complains against Standard Fire Insurance Company (“Defendant” or “Standard Fire”), and alleges the following upon information and belief:

PARTIES

1. Plaintiff is an individual who owns a residential property in this judicial district. His property, located in Kismet, Fire Island Beach, in the Town of Islip, County of Suffolk in the State of New York at the address shown below, was insured against flood damages by Standard Fire:

Name	Property Street	City	State	Zip	Insurance Policy Number
Joseph Barbosa	65 E. Lighthouse Walk	Kismet	NY	11706	25658168822012

2. The Standard Fire Insurance Company (“Defendant”) was and is a private insurance company incorporated under the laws of the State of Connecticut with its principal place of business located at One Tower Square, Hartford, CT 06183.

3. Defendant is a "Write Your Own" ("WYO") carrier participating in the National Flood Insurance Program pursuant to the National Flood Insurance Act ("NFIA"), as amended, 42 U.S.C. § 4001, et seq. Defendant issued Standard Flood Insurance Policy (the "Policy") in its own name, as a fiscal agent of the United States. Pursuant to 44 C.F.R. Section 62.23(d) and (i)(6), Defendant was and is responsible for arranging the adjustment, settlement, payment and defense of all claims arising under the Policy.

JURISDICTION

4. This action arises under the NFIA, Federal regulations and common law, and the flood insurance Policy that Defendant procured for and issued to Plaintiff in its capacity as a WYO carrier under the Act. The Policy covered losses to Plaintiff's property located in this judicial district.

5. Federal Courts have exclusive jurisdiction pursuant 42 U.S.C. § 4072 over all disputed claims under an NFIA Policy, without regard to the amount in controversy, whether brought against the government or a WYO company.

6. This Court has original exclusive jurisdiction to hear this action pursuant to 42 U.S.C. § 4072 because the insured property is located in this judicial district.

7. This Court also has original jurisdiction pursuant to 28 U.S.C. § 1331 because this action requires the application of federal statutes and regulations and involves substantial questions of federal law.

VENUE

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 and 42 U.S.C. § 4072 because it is where Plaintiff's property is located and where a substantial part of the events at issue took place.

FACTUAL BACKGROUND

9. Plaintiff purchased and Defendant sold a Standard Flood Insurance Policy (the "Policy") to insure his property located at the address shown above against physical damage by or from flood. The Policy was in effect at the time of Superstorm Sandy (the "Storm").

10. Plaintiff paid all premiums when due and the Policy was in full force and effect on the date relevant to this suit.

11. On or about October 29, 2012, the Storm made landfall in the greater New York Metropolitan area, causing widespread devastation and severely damaging Plaintiff's insured property.

12. As a result of the Storm, Plaintiff suffered losses by and from flood to the insured property. Plaintiff has incurred and/or will incur significant expenses to repair and replace his flood-damaged property.

13. Plaintiff reported the damage and properly submitted his claim to Defendant. Plaintiff duly performed and fully complied with all of the conditions of the Policy.

14. Defendant unjustifiably failed and/or refused to perform its obligations under the Policy and wrongfully denied or unfairly limited payment on the claim.

15. Plaintiff retained independent experts to evaluate the damages to his insured property caused by and from flood. The experts determined and found conclusive evidence that the flood event critically damaged Plaintiff's covered property. These damages were thoroughly documented and were submitted to Defendant for review. Defendant has unfairly and improperly persisted in denying the claims.

16. Plaintiff's initial claim was improperly denied, as were his subsequent petitions to Defendant. After denial of his unsworn Supplemental Claim, Plaintiff filed a Sworn Proof of Loss. Both were denied based on the conclusions of a U. S. Forensic report prepared by Dennis Morrissey. P.E. Plaintiff's Proof of Loss was denied in a letter dated December 5, 2014. Plaintiff was forced to make two appeals to FEMA, which were ignored and/or summarily dismissed. After revelations and substantial evidence of widespread malfeasance in the Hurricane Sandy claims process, FEMA admitted in the NFIP Transformation Task Force Claims Review Process Overview Briefing Book ("Claims Review Briefing Book") that "*engineering companies have been scrutinized for rushed, incomplete, or inaccurate engineering reports*." Plaintiff was victimized by this widespread malfeasance and his home was the subject of an incomplete and inaccurate U.S. Forensic report that attributes the flood damage to his home to non-covered causes of loss. After admitting that systematic fraud occurred in the adjustment of Sandy claims, FEMA vowed to reopen 144,000 claims allowing underpaid claimants to be made whole. FEMA established a new process to re-evaluate claims and right the wrongs suffered by Sandy victims. FEMA instructed its adjusters in the Claims Review Briefing Book to "*make all payments that ought to be made…*" and has stressed the need to "*pay special attention to the policyholder at every step*." Having been significantly underpaid by Standard Fire, Plaintiff relied on FEMA's promises to fairly re-evaluate his claim and re-submitted his case to FEMA under the Sandy Claims Review Process on or before May 26, 2015, Case No. 11619. He also relied on FEMA's published pronouncements that it would not be necessary to hire an attorney in order to successfully re-submit a claim under the Sandy Claims Review Process.

17. Plaintiff waited through the summer for his assigned adjuster to review his submission. Despite FEMA's public pronouncements, on October 7, 2015, more than 4 months

after re-opening his claim, its adjuster did not “make all payments that ought to be made” and its review process utterly failed to right the wrongs suffered by Plaintiff, when Plaintiff was presented with an “official letter” based on a September 10, 2015, “Task Force Final Review Narrative” in which the task force engineer agreed with the U.S. Forensic report, without any discussion. Plaintiff trusted FEMA at its word that his claim would be fairly considered under the Sandy Claims Review Process, but, after submitting all necessary and sufficient documentation to FEMA, including his fraudulent engineering report as well as proof of underpayment, his adjuster returned an offer substantially below the total amount of his unpaid covered flood loss.

18. Shocked and appalled, Plaintiff then utilized the last step of the Sandy Claims Review Process and presented his claim, fraudulent engineering report, and proof of underpayment to a FEMA neutral mediator which finally occurred on November 17, 2015. Plaintiff cannot wait for a determination from the out-of-state neutral as the Statute of Limitations based on the denial of his Sworn Proof of Loss is looming and imminent.

19. Plaintiff relied on FEMA’s public assertions that all claims would be carefully and fairly re-evaluated and that it would not be necessary to retain an attorney to have a claim successfully reviewed, to his detriment. Although FEMA claimed Plaintiff would not need to retain an attorney, he was subjected to a lengthy and complicated claims process with significant implications to legal rights and remedies available to him, and he was taken advantage of. Plaintiff’s claim was reviewed under the guise of fairness and neutrality when in fact FEMA and the Sandy Claims Review Process used their superior bargaining position to ensure Plaintiff received no legal assistance and no compensation for his losses. Although Plaintiff started the review process in a timely manner in May 2015, and based on FEMA’s former authorized

representative, Brad J. Kieserman's representation that the process would be completed within three months, more than 6 months have elapsed and Plaintiff is forced up against another FEMA-imposed hard deadline, another road block meant to prevent Plaintiff from pursuing his claim and being fairly paid. Plaintiff is being subjected to the vagaries of where his case falls in FEMA's review process timeline. Plaintiff is out of time, filing at the last hour possible, to preserve his rights.

FIRST CLAIM FOR RELIEF

Breach of Contract

20. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

21. Plaintiff and Defendant entered into a contract when Plaintiff purchased and Defendant issued the Policy.

22. The Policy, at all times relevant and material to this case, provided flood insurance coverage to Plaintiff for, among other things, physical damage caused by flood to his properties and contents located at the address shown above.

23. Plaintiff fully performed under the contract by paying all premiums when due and cooperating with Defendant regarding his claims. Plaintiff complied with all conditions precedent to his recovery herein, including appropriate and adequate demands, or Defendant waived or excused such conditions precedent.

24. Defendant failed to perform and materially breached the insurance contract when it wrongly failed to pay and refused to reimburse Plaintiff what he was owed for damages the Storm caused to properties covered by the Policy. Defendant also breached the contract by failing to perform other obligations it owed under the Policy.

25. By virtue of its various breaches of contract, including its failure to fully reimburse Plaintiff for his covered losses, Defendant is liable to and owes Plaintiff for the actual damages he sustained as a foreseeable and direct result of the breach, all costs associated with recovering, repairing and/or replacing the covered properties, together with interest and all other damages Plaintiff may prove as allowed by law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Joseph Barbosa respectfully requests that the Court enter judgment in his favor for such amounts as Plaintiff may prove at trial, for reasonable attorneys' fees and costs, expenses, pre-judgment and post-judgment interest as provided by law, and other and further relief the Court may deem just and proper.

Respectfully submitted,

DENIS G. KELLY & ASSOCIATES, P.C.

By: *[/s/ Denis G. Kelly](underline)*________________________
Denis G. Kelly
DK7734
New York State Bar No. 2520906
74 West Park Avenue
Long Beach, New York 11561
(516) 897-0800 (Office)
(516) 897-0812 (Facsimile)
D.Kelly@KellyNYLaw.com

To: Standard Fire Insurance Company
One Tower Square
Hartford, CT 06183